

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1960 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHOGILAL G DATANIA

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR PV HATHI for the Petitioner

MR MUKESH PATEL for Respondents no.1 and 2

MR SB NANAVATI for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner by this Special Civil Application prayed for the direction to the respondents to promote him as a Sr. Expert on the basis of his length of service after giving him the deemed date of promotion in the cadre of Jr. Expert. The petitioner has further challenged the order annexure, 'G' dated 7-4-1984 under which the respondent

no.3 was promoted to the post of Senior Expert.

2. The petitioner entered in the service of the Finger Print Bureau of the Police department. In the year 1965, he was promoted as a clerk from the post of a peon. On 21-8-1970 the petitioner was promoted as a Searcher. The petitioner has undergone theoretical and practical training in classifications, searching and filing of finger print slips for a period of six months. In the year 1980, the petitioner passed Searcher's examination held by All India Board Examination for Experts. After passing of this examination, the petitioner was confirmed as Searcher. In the combined gradation list of employees of Finger Print Bureau as on 1-10-1981 which has been published on 24-2-1981, the petitioner was shown at Sr. No.16 in the cadre of Searcher whereas respondent no.3 Shri C.M. Solanki was shown at Sr. no. 18. One P.B. Solanki was shown at Sr. no.17. The petitioner has been promoted on the post of Junior Expert on 9-4-1981. The petitioner passed the Junior Expert's Examination on 13-3-1981. The petitioner stated that he should have been promoted in the year 1976 as a Junior Expert on provisional basis. The prayer has been made by the petitioner to respondent for correction of his position in the seniority list of Searchers. The respondent no.3 has been promoted under order annexure 'G' dated 7-4-1984.

3. It is not in dispute that for promotion to the post of Jr. Expert, the Searcher must have passed the Expert's examination. The passing of the Searcher's examination held by All India Board Examination for Experts was an eligibility for promotion. The petitioner has passed this examination in the year 1980 whereas the respondent no.3 has passed in December, 1975. The respondent no.3 has been promoted as Jr. Expert in August, 1976. Though the petitioner was appointed earlier as Searcher to respondent no.3, but in the year 1976 when the respondent no.3 was promoted to the post of Jr. Expert, he was not eligible for promotion to the said post. The seniority is not the only thing to be considered for promotion, but where the senior was not eligible for promotion at the relevant time, certainly the junior person who possessed the eligibility has all the right for promotion, and should be given the promotion. Exactly the same has happened in the present case. The petitioner has not challenged the order of promotion of respondent no.3 earlier to filing of this Special Civil Application. He acquired the eligibility for promotion to the post of Jr. Expert only in December, 1980 and thereafter he has been promoted as Jr.

Expert on 9-4-1981. The petitioner is much junior to respondent no.3 in the cadre of Junior Experts and as such he has no concern whatsoever in the matter of promotion to the post of Sr. Expert under the order dated 7-4-1984. The respondent no.3 has rightly been promoted to the post of senior Expert as he is much senior to the petitioner in the cadre of Jr. Expert. The seniority in the cadre of Searcher has no relevance in the present case as the petitioner is left much behind the respondent no.3 in the cadre of Jr. Expert. None of the legal or fundamental right of the petitioner has been infringed. The grievance made by the petitioner in this Special Civil Application has no substance.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated.

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